100TH CONGRESS
1st Session

SENATE

EXEC. REPT.
100-12

ILO CONVENTION NO. 147

DECEMBER 17 (legislative day, DECEMBER 15), 1987.—Ordered to be printed

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 99-21]

The Committee on Foreign Relations, to which was referred a Certified Copy of the Convention (No. 147) Concerning Minimum Standards in Merchant Ships, adopted by the International Labor Conference at its 62d Session in Geneva on October 13, 1976, having considered the same, reports favorably thereon with understandings and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The purpose of Convention No. 147 is to improve employment conditions in merchant ships and to expand the ability of "port states" that are party to the Convention to take steps to protect the health and safety of seamen manning merchant vessels calling in those states.

MAJOR PROVISIONS

The following is a summary of the Convention and accompanying recommendations which were included in the administration's coordinated views submitted by the Secretary of Labor to the Secretary of State on December 30, 1985:

Article 1 provides that the Convention applies to all privately and publicly owned sea-going ships and tugs engaged in the commercial transport of cargo or passengers. National laws or regulations determine whether ships are "sea-going"; however, Article 1 specifies that the Convention does not apply to sailboats, fishing boats, small vessels, and oil rigs and drilling platforms when not engaged in navigation. Whether vessels come

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within these latter two exceptions to coverage is to be determined by the competent authorities of each ratifying state.

Under Article 2, a ratifying state must have laws and regulations for and exercise effective jurisdiction over ships registered under its flag concerning: (1) safety standards on ships, including standards of competency, hours of work, and manning; (2) appropriate social security measures; and (3) shipboard conditions of employment and living arrangements to the extent these are not covered by collective bargaining agreements or determined by the courts. These laws and regulations should be "substantially equivalent" to the International Labor Organization Conventions listed in the Appendix. These Conventions concern minimum age for employment at sea, shipowners' liability for sick and injured seamen, seamen's sickness benefits and medical care, medical examination of seafarers, prevention of accidents at sea, accommodation of crews, food and catering for ships' crews, officers' competency certificates, seamen's articles of agreement, repatriation of seamen, freedom of association, and the right to organize and bargain collectively. In matters involving other shipboard conditions of employment over which a ratifying state has no effective jurisdiction, the state must satisfy itself that measures for their effective control are agreed to by shipowners' and seafarers' organizations, constituted on the basis of freedom of association and the right to organize and bargain collectively. A ratifying state must verify that ships registered in its territory comply with the laws and regulations required by Article 2 of the Convention and as may be appropriate under national law with applicable collective bargaining agreements.

In addition, under Article 2, the ratifying state must ensure, after consultation with labor and employer organizations, that adequate grievance procedures exist for the investigation of complaints involving the hiring of seafarers of its own nationality on ships registered in a foreign country when the ship is in the state's territory, and for complaints regarding the hiring of foreign seafarers in its territory on ships registered in a foreign country, and for the reporting of such complaints to the competent authority in the country in which the ship is registered. The ratifying state must also ensure that seafarers employed on its flag ships be properly qualified or trained, verify that ships registered in its territory adhere to the International Labor Organization Conventions in force which it has ratified, and hold official inquiries into any serious marine casualty involving ships registered in its territory.

Article 3 directs a ratifying state, insofar as practicable, to advise nationals of the possible problems of signing on board a ship registered in a state which has not ratified Convention 147 until it is satisfied that standards equivalent to those fixed by the Convention are being applied.

Article 4 contains the "port control" provisions of the Convention. If a ratifying state receives a complaint or obtains evidence that a ship in its port does not conform to the standards of the Convention, it may report the matter to the government of the country in which the ship is registered and take meas-

ures necessary to rectify any conditions on board which are "clearly hazardous to safety and health." In taking the latter action, the port authority will attempt to have a representative of the flag state present and will not unnecessarily detain or delay the ship. Under Article 4, a "complaint" is defined as "information submitted by a member of the crew . . . or . . . any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew."

Under Article 5, the Convention is open to the ratification of International Labor Organization members who are parties to, or who undertake to fulfull the requirements of, the International Maritime Organization Conventions on Safety of Life at Sea, Load Lines, and Preventing Collisions at Sea.

Article 6 through 12 are the final clauses of Convention No. 147.

The Recommendation provides guidelines to International Labor Organization members for the attainment, by stages if necessary, of additional standards for the same ships to which the Convention applies. The additional standards include seafarers' paid vacations, social security, vocational training, workers' representation, and the IMCO/ILO Document for Guidance, 1975.

Understandings

The administration has proposed five understandings to be included in the U.S. instrument of ratification. The purpose of these understandings is to clarify possible inconsistencies between the domestic laws of the United States and the Convention. The following is a detailed explanation of each understanding as provided in the submittal document of March 20, 1986:

A review of domestic law has shown that there are a few areas where understandings may be drafted to clarify potential inconsistencies between laws of the United States and the Convention. The first item that may be the subject of an understanding deals with the Convention's application to sea-going ships, especially the provision regarding sea-going tugs. Article 1, paragraphs 1 and 3 state that this Convention applies to sea-going ships including tugs. However, paragraph 2 indicates that national laws or regulations shall determine when ships shall be regarded as "sea-going ships" for purposes of this Convention. Under United States law (at 46 U.S.C. Subtitle II) motor vessels of over 300 gross tons which go beyond the "boundary line" shall be considered "sea-going motor vessels" for purposes of the statute's inspection requirements. The "boundary line" referred to in this law is drawn from an 1895 law (33 U.S.C. § 151) which authorizes the Coast Guard to create a line that is up to twelve miles off the coastline of the United States. If a motor vessel operates beyond the "boundary line", unless it is otherwise exempted by statute, it is considered a sea-going motor vessel for purposes of certain inspection provisions.

Under this law, certain ships, including tugboats, of under 300 tons, unless inspected as a vessel carrying freight or pas-

sengers for hire, are not "sea-going motor vessels" and are exempt from inspection requirements. The exemption may be regarded by some as being in conflict with the Convention's provision that sea-going tugs shall be covered. As stated above, however, the Convention provides that only those ships which are considered "sea-going ships" by a nation's laws or regulations were intended to be covered. The laws and regulations of the United States do not regard ships, including tugboats, of under 300 gross tons as "sea-going motor vessels." Accordingly, it would be appropriate for an understanding to be submitted with the ratifying instruments which indicates that the United States would not regard its obligation under this provision of the Convention to extend to uninspected ships, including tugboats, of less than 300 tons. In this regard, it is proposed that the following language be used:

> (1) It is the understanding of the United States that its obligations under Article 1 of this Convention do not extend to uninspected ships, including tugboats, of less than 300 tons.

The second item which may be the subject of an understanding is the Convention's provision, at Article 1, paragraph 4(b), which exempts from coverage ships engaged in fishing or in whaling or in similar pursuits. A question has arisen on whether fish processing and fish tender vessels, which receive and process fish caught by other vessels or supply fish vessels, may properly be exempted under this provision. If they do not qualify, there may be a conflict with United States law that exempts from inspection certain fish processing and tender vessels. Our review of the Convention indicates, however, that fish processing and tender ships could be included in the exemption as ships engaged in "similar pursuits". Since the question arose, however, it is felt that an understanding should be included with the ratifying instruments to clarify the United States' position on this issue. Accordingly, it is proposed that the following language be used:

> (2) It is the understanding of the United States that Article 1, paragraph 4(b) of the Convention includes fish processing vessels of not more than 5000 tons and fish tender vessels of not more than 500 tons as ships engaged in fishing or in whaling or in similar pursuits.

The third item that may be the subject of an understanding addresses concerns regarding Article 2(a) and the meaning of the words "substantially equivalent". The Convention states that ratifying members should satisfy themselves that the laws and regulations laying down the minimum standards are "substantially equivalent" to the conventions listed in the Appendix to Convention 147. Concerns were raised because of uncertainty over the effect of the conventions listed in the Appendix on the laws of the United States. The United States has ratified three of the fifteen conventions listed in the Appendix, the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), the

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) and the Officers' Competency Certificates Convention, 1936 (No. 53). The United States has laws bringing into force the conventions it has ratified. In addition, however, there are a number of laws and regulations in the United States that establish standards which are substantially equivalent to those sought in the other 12 conventions listed in the Appendix. These include State Department rules on the repatriation of seamen; Coast Guard regulations on the medical examination of licensed and rated seafarers, setting minimum standards for accommodations and for food and catering for ships' crews; regulations establishing safety standards for ships; and United States labor laws protecting workers' rights to organize and engage in collective bargaining. Accordingly, after consultation with the worker and employer representatives, the following understandings are requested to be included with the ratifying instruments:

> (3) It is the understanding of the United States that the term "substantially equivalent" as it appears in Article 2(a) requires the ratifying state to take account of the general goal of the instruments in the Appendix, but does not require it to adhere to the precise terms of these instruments. This means that national laws and regulations may be different in detail, if the ratifying state has satisfied itself that the general goals of the instruments in the Appendix are respected.
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> (4) The United States Government understands and is satisfied, as required under Article 2(a) of the Convention, that the substantive provisions of United States statutes and regulations are substantially equivalent to the rights and responsibilities established in the instruments enumerated in the Appendix.

The final item that is the subject of an understanding addresses the concern that, under Article 2(a)(iii) of the Convention, collective bargaining agreements may be interpreted to have the same status as laws or regulations regarding "shipboard conditions of employment." If this were so, then the terms of collective bargaining agreements might be given greater effect than normally provided for by labor statutes of the United States. An understanding would make clear that the terms of collective bargaining agreements relating to shipboard conditions of employment have no greater legal effect than that accorded such terms under domestic labor statutes. The following understanding is requested to be included with the ratifying instruments:

> (5) It is the understanding of the United States that the legal status of the terms of collective bargaining agreements relating to shipboard conditions of employment and living arrangements have no greater effect

than that accorded such terms under United States labor statutes.

Committee Action

On October 1, 1987, the committee held a public hearing on ILO Convention (No. 147) Concerning Minimum Standards in Merchant Ships. Testimony was received from the following individuals: (1) The Honorable Orrin Hatch (R-Utah); (2) The Honorable William E. Brock, Secretary of Labor; (3) Mr. Abraham Katz, President, U.S. Council for International Business, New York, New York; (4) Mr. Anthony Freeman, Special Assistant to the Secretary and Coordinator, International Labor Affairs, Department of State; (5) Mr. Frank Pecquex, Legislative Director, Seafarers International Union of North America, Camp Springs, Maryland; (6) Mr. Karl Landgrebe, Special Assistant to the President, National Marine Engineers' Beneficial Association, Washington, D.C.; and (7) Mr. Talmage Simpkins, Executive Director, AFL-CIO Maritime Committee, Washington, D.C. Further testimony on this Convention was received on October 21, 1987, from the National Association of Manufacturers represented by Mr. James D. Burge, Corporate Vice President, Motorola, Inc., Schaumburg, Illinois.

The hearings on this Convention have been printed in the report on ILO Convention No. 144 (Treaty Doc. 99-20).

The committee considered the Convention at its business meeting on December 17, 1987, and voted 18-0 to report it favorably to the Senate with five understandings for its advice and consent. Ayes: Senators Pell, Biden, Sarbanes, Cranston, Dodd, Kerry, Simon, Sanford, Adams, Moynihan, Helms, Kassebaum, Boschwitz, Pressler, Murkowski, Trible, Evans, and McConnell.

Entry Into Force

This Convention shall come into force for the United States 12 months after its ratification has been registered with the Director-General of the International Labor Organization.

Test of Resolution of Ratification

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of a Certified Copy of the Convention (No. 147) Concerning Minimum Standards in Merchant Ships, adopted by the International Labor Conference at its 62d Session in Geneva on October 13, 1976, subject to the following understandings:

(1) It is the understanding of the United States that its obligations under Article 1 of this Convention do not extend to uninspected ships, including tugboats, of less than 300 tons;

(2) It is the understanding of the United States that Article 1, paragraph 4(b) of the Convention includes fish processing vessels of not more than 5000 tons and fish tender vessels of not more than 500 tons as ships engaged in fishing or in whaling or in similar pursuits;

(3) It is the understanding of the United States that the term "substantially equivalent" as it appears in Article 2(a) requires

the ratifying state to take account of the general goal of the instruments in the Appendix, but does not require it to adhere to the precise terms of these instruments. This means that national laws and regulations may be different in detail, if the ratifying state has satisfied itself that the general goals of the instruments in the Appendix are respected;

(4) The United States Government understands and is satisfied, as required under Article 2(a) of the Convention, that the substantive provisions of United States statutes and regulations are substantially equivalent to the rights and responsibilities established in the instruments enumerated in the Appendix; and

(5) It is the understanding of the United States that the legal status of the terms of collective bargaining agreements relating to shipboard conditions of employment and living arrangements have no greater effect than that accorded such terms under United States labor statutes.

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